

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 279 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
(No. 1 to 5 NO)

ZAVERBHAI DAYALBHAI

Versus

DEVJIBHAI HARIBHAI

Appearance:

MR MB GANDHI for Appellant

Mr. K.J. Shethna, Ld. Counsel for Res.Nos. 1,2, & 4

Mr. K.C. Shah, Ld. PUBLIC PROSECUTOR for Respondent No. 31

CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

Date of decision: 01/08/97

ORAL JUDGEMENT@@ (PER: S.D. DAVE, J)
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30 original accused persons came to be acquitted

by the Ld. Addl. Sessions Judge, Ahmedabad (Rural) in Sessions Case No. 57 of 1984 of the alleged commission of the offences punishable under section 147, 148, 149, 323, 334, 427 and 436 of I.P. Code, under the orders dated September 29, 1984. Being aggrieved and dissatisfied with the above said orders of acquittal, the original complainant, namely Zaverbhai Dayalbhai had presented this Appeal against all the 30 accused persons. At the admission stage, the Appeal came to be summarily dismissed against all the respondents accused, except Respondents No.1, 2 and 4. Therefore in the present Appeal against the acquittal we are concerned with the said three Respondents.

The accused persons were put on trial for the alleged commission of the above said offences on the accusation that, following disputes, regarding the house site land and the house constructed thereupon, the accused persons had formed themselves into an unlawful assembly on October 27, 1981 at village Nava Navda under Dhandhuka taluka of Ahmedabad district, and having armed with deadly weapons committed rioting and put the house of the complainant to fire and had caused certain injuries to his son. The charge which came to be framed by Ld. Addl. Sessions Judge at Exhibit-4 came to be denied by the accused persons and they had claimed to be tried by the Court. Upon the appreciation of the evidence which was made available to the Court below, the Judgment of Acquittal has been pronounced, which is under challenge in the present Appeal against the Respondents no. 1, 2 and 4.

The Court below has carefully analysed and considered the prosecution evidence and ultimately has come to the conclusion that, the evidence was falling short for establishing the identity of the accused persons. We have read the evidence which was made available to the trial Court by the prosecution, with the assistance of ld. counsel for the appellant Mr. M.B. Gandhi, ld. counsel Mr. K.J. Shethna who appears for Respondents no. 1, 2 & 4. We have also heard ld. Govt. Counsel Mr. K.C. Shah who represents the State.

Upon reading the said evidence we are of the view that, no other view was permissible to be taken by the Court below. The evidence tendered by SRP Armed Police Constable Eknath Gorpade, PW-2, would go to show that, he was posted at the village because of the apprehension of some untoward incident between Zaverbhai Dayalbhai Patel in whose favour there was the grant of certain land by the Government and the village people.

According to witness Eknath Gorpade, a boy had approached him at about 9.30 p.m. on the day of the occurrence and had handedover him a chit saying that, village people have engaged in rioting and that, therefore, he should reach the spot. According to him, he had gone there and later on had gone to the police station and had informed them. Any how, his say in clear and unequivocal terms is that, he was not able to identify any of the members of the crowd which had collected near the house. Same conclusion would be from the say in exhibit-95, the complaint filed by him before the concerned police station. So far as the evidence of Zaverbhai Dayalbhai, PW-5, Exhibit-5 is concerned, we shall have to say that his evidence also would not be leading to the establishment of identity of any of the members of the crowd or to the conclusion that the respondents accused with which the present appeal is concerned could be identified during the incident. In the same way, from the evidence of his son Vallabhbhai, PW-6, Exhibit-51 also it cannot be culled out that either he or anybody else was able to identify any of the members of the crowd. In our opinion, therefore, the ld. trial Judge was perfectly justified in coming to the conclusion that the identify of any of the accused persons, including Respondents no. 1, 2 and 4 could not be established. The present Appeal therefore, in our opinion, requires a dismissal. We order accordingly. The bail bonds shall stand cancelled.

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